

**SUPPLEMENTAL DECLARATION OF DEAN R. GARRAFFA  
AND DOUGLAS J. TOTH SUPPORTING REINSTATEMENT  
OF U.S. PATENT NOS. 5,678,541; 5,803,073; 6,463,640 and 6,761,163**

We, Dean R. Garraffa and Douglas J. Toth, declare that we have direct knowledge of all facts set forth in this Declaration and:

1. I am one of two founders of Atomic Aquatics (hereinafter "Atomic"), an S-corporation founded in the state of California in 1996, those two founders being declarants Dean R. Garraffa and Douglas J. Toth (hereinafter the "Managers").
2. From its founding to the present, the business of Atomic has been principally in the business of designing, manufacturing and selling products for scuba-diving.
3. The Managers were the principal decisionmakers and managers responsible for the affairs of Atomic from its founding through November of 2010.
4. During the period of 1995 through November of 2010, the Managers were the principal designers of the products Atomic sold, as well as the principal decisionmakers of Atomic as a business.
5. During the period of 1995 through November of 2010, the Managers relied upon the expertise of others to manage specific business aspects of Atomic, including an accountant and Patent Attorney Leonard Tachner (hereinafter "Tachner") for patent and trademark issues.
6. Prior to 2011 and at the time that Atomic had hired the largest number of employees, Atomic was staffed as follows: Atomic maintained an office location and a machine shop location; at the office location were typically two customer service representatives, one production engineer, one controller, one production supervisor, one performing shipping duties, and four to five production workers; and at the machine shop location were employed about 6-8 persons performing manufacturing tasks.
7. During the period of 1995 through November of 2010, Atomic engaged the services of Tachner for substantially all of its patent prosecution and maintenance needs, including the maintenance of U.S. Patents 5,678,541; 5,803,073; 6,463,640; 6,761,163; 7,188,869; 7,181,778; 7,686,032; 7,704,015 and 7,712,793 (the "Atomic Patents").
8. At all times, Atomic has considered the scheduling and payment of patent maintenance fees to be administrative, but vital acts best performed by a reliable entity regularly engaged in that practice.
9. At the time of the issuance of the first of the Atomic Patents in 1997, Atomic had discussed the payment of maintenance fees. At about that time, Atomic reached an understanding with Tachner that his office would manage the maintenance fees of the patents that issued from patent applications prosecuted by Tachner, advising and invoicing Atomic as needed.

10. At the time Atomic was founded, the Managers had dealt with Tachner in their prior employment, and the Managers knew Tachner to have a reputation as a reliable person to handle legal matters that concerned patents and patent applications.

11. At all times Atomic relied upon Tachner to inform them when actions were needed in any of its patent matters, including the payment of maintenance fees.

12. Atomic and its managers did not inquire into the status of U.S. Pat. Nos. 5,803,073, 5,678,541, 6,463,640, and 6,761,163 (hereinafter the "Subject Patents") in the time period between January 1, 2005 and November 1, 2010 because Tachner was apparently skillfully and competently managing other patent matters for Atomic, because Tachner had managed the payment of maintenance fees for Atomic in the past, and because the tasks of calendaring and noticing Atomic of the payment of maintenance fees for specific patents had been assigned to Tachner so that the Managers could focus upon other vital tasks for the purpose of ensuring the success of Atomic as a business.

13. I conducted a thorough search for written communications, emails, instant messages and other electronic communications involving both of Atomic and Tachner that were within my access, and provided all that I found in my search to Everett Robinson for inspection.

14. Communications regarding Atomic between the Managers and Tachner or his office were typically over the telephone, including instructions to Mr. Tachner. Inquiries for instructions from the Managers to pay maintenance fees were always made by telephone from Mr. Tachner's office.

15. By my present recollection, when Tachner and his office sent communications by email, instant message or other electronic communications, these were made in short messages, none of which asked for instructions concerning the payment of maintenance fees.

16. The Managers made some inquiries at various times to Tachner's office concerning the status of the Subject Patents including whether maintenance fees had been paid or were due, which inquiries were met with answers that Mr. Tachner's office would send notice when actions were needed to maintain them.

17. The payment of patent maintenance fees was not a specific item that appeared on the budgets of Atomic, annual or otherwise, because it was not considered to be a significant expense in comparison to the other expenses of Atomic.

18. Considering only what I knew prior to the discovery of the expiration of the Subject Patents, I believe that it was reasonable and prudent to leave the calendaring and management of the payment of patent maintenance fees in Tachner's care.

18. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the Atomic Patents, of which the Subject Patent is one.

Name: Dean R. Garraffa

Signature: 

Date: 4-24-2013

Name: Doug J. Toth

Signature: 

Date: 4-24-13